

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

Andrew E. Sanford,  
Petitioner,  
v.  
Mcvay,  
Respondent.

No. 2:22-cv-01304 KJM AC P

ORDER

Petitioner, a state prisoner proceeding pro se, filed an application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 4, 2024, the magistrate judge filed findings and recommendations, which were served on all parties, and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one days. ECF No. 30. Neither party filed objections to the findings and recommendations.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) ("[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate] court

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1 . . .”). Having reviewed the file, the court finds the findings and recommendations to be  
2 supported by the record and by the proper analysis.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The findings and recommendations filed January 4, 2024 (ECF No. 30), are adopted.

5 2. Respondent’s motion to dismiss (ECF No. 25) is GRANTED to the extent that Claims  
6 Six and Seven, and the putative claims identified in the attachment to the petition, are dismissed  
7 without prejudice as unexhausted and otherwise DENIED.

8 3. Petitioner’s motion for a stay (ECF No. 27) is GRANTED in part and DENIED in part  
9 as follows:

10 a. DENIED as to the request for a stay under *Rhines v. Weber*, 544 U.S. 269 (2005);

11 and

12 b. GRANTED as to the request for a stay under *Kelly v. Small*, 315 F.3d 1063 (9th  
13 Cir. 2003).

14 4. Claims Six and Seven of the petition, and the putative claims listed at ECF No. 1  
15 p. 19, are dismissed without prejudice as unexhausted and Claims One through Five of the  
16 petition are stayed under *Kelly*.

17 5. Petitioner is directed to immediately proceed to exhaust his state remedies.

18 6. Petitioner is directed to file a case status report every sixty days, advising the court of  
19 the progress of his state habeas petition.

20 7. Petitioner is directed that, within thirty days of a decision by the state’s highest court  
21 exhausting his new claims, he must notify this court of the decision and at that time request a lift  
22 of the stay and file an amended petition.

23 8. The Clerk of the Court is direct to administratively close this case.

24 DATED: March 27, 2024.

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26   
27 CHIEF UNITED STATES DISTRICT JUDGE  
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